IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.6333 of 2006

Dr.Pramod Mitharam Bhangale ..Petitioner

vs.

1. Tukaram Maruti Chormale
and others ...Respondents

Shri P.V.Hushing for petitioner.

CORAM: S.C.DHARMADHIKARI J.
14th JUNE, 2007

P.C.

1. Heard Shri Hushing appearing for the petitioner who is original defendant no.24 and has been restrained by the order under challenge from taking possession of the land which he claims to have purchased under the sale deed.

2. The suit which is filed by the respondent is broadly challenging the alienation in favour of the present petitioner as not being binding upon him. During the pendency of the suit the application (Exh.5) was preferred and the Trial Court observed that Survey No.28 which is purchased on the basis of the sale deed dated 6th April, 2004 is alienated after there is a partition between the father of the respondent and family members. That document of partition or any material evidencing the same is not produced and that is how the restraint order

against the present petitioner has been passed. He has been restrained from taking possession of the land on the strength of the sale deed.

3. Aggrieved thereby Misc.Civil Appeal was preferred and by the impugned order dated 6th July 2006 the First Adhoc Additional District Judge, Baramati, District Pune has dismissed the same.

4. With the able assistance of Shri Hushing, I have perused the impugned order. In paras 17 and 18 of the same, the cogent reasons for granting the restraint order have been assigned. While it is true that the petitioner/appellant has purcvhased some portion of land, block no.485, earlier from other co-sharers but as far as evidence of partition is concerned the same is lacking even at the prima facie stage. In this view of the matter, the order of the Trial Court has been confirmed.

5. These are tentative and prima facie findings rendered at the interim stage after perusal of the material produced by the parties. This is not a court of further appeal and neither it is permissible to reappreciate and reappraise the materials which are produced before the Courts below. Considering the controversy between the parties and their failure even at the prima facie stage to prove the partition, the order under challenge is fully

justified. More so, when the hearing of the suit has been expedited by the lower Appellate Court. I see no prejudice being caused to the petitioner by the order under challenge. In such circumstances, there is no merit in this petition and it is summarily dismissed.

6. However, the Trial Court to endeavour and dispose of Reg.Civil Suit No.,103 of 2004 as expeditiously as possible and in any event within a period of one year from today.

(S.C.DHARMADHIKARI J.)